

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MICHAEL J. MIMS,	:	
	:	CIVIL CASE NO. 3:05CV7362
Plaintiff,	:	
	:	JUDGE DAVID KATZ
v.	:	
	:	MAGISTRATE JUDGE V. ARMSTRONG
ANDREW BRYSON, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANTS WITH JURY DEMAND**

DEFENDANTS ANDREW BRYSON, WILLIAM CARTER, AND GREGORY SMITH, by and through counsel, answer this 42 U.S.C. § 1983 action, and hereby make the following admissions and denials:

**FIRST DEFENSE**

1. Plaintiff's Complaint fails to state a claim against Defendants upon which relief can be granted.

**SECOND DEFENSE**

2. Defendants admit the allegations in paragraphs 2 through 11 of the Complaint.
3. Defendants neither admit nor deny that Plaintiff was sitting on his bed at the time, but admit the remaining allegations in paragraph 12 of the Complaint.
4. Defendants deny the allegations in paragraphs 15 through 20 in the "Facts" section of the Complaint.

5. Defendants admit the allegations in paragraphs 20 through 24 in the “Grievances and Exhaustion” section of the Complaint. (Note. Page 5 of the Complaint was not filed.)

6. Defendants are without knowledge or information sufficient to form a belief to the truth of each allegation contained in Plaintiff’s Complaint not specifically admitted or denied in the Answer.

**THIRD DEFENSE**

7. Defendants have not deprived Plaintiff of a constitutionally protected right.

**FOURTH DEFENSE**

8. Defendants acted in good faith at all times relevant.

**FIFTH DEFENSE**

9. Defendants are protected by qualified and other immunities.

**SIXTH DEFENSE**

10. Plaintiff fails to allege and show that he has exhausted his administrative remedies concerning each claim against each Defendant as required by 42 U.S.C. 1997e(a).

**SEVENTH DEFENSE**

11. Punitive damages are not warranted because Defendants did not engage in egregious conduct or act with willfulness or malice.

**EIGHTH DEFENSE**

12. Defendants reserve the right to assert such additional affirmative defenses as may become appropriate upon prior notice to Plaintiff.

**JURY DEMAND**

13. Defendants request a trial by jury.

**WHEREFORE**, Defendants respectfully request that this Court issue an Order dismissing Plaintiff's 42 U.S.C. § 1983 action with prejudice; assessing costs to Plaintiff; certifying, pursuant to 42 U.S.C. § 1915(a)(3) that an appeal from this decision cannot be taken in good faith; and awarding any other relief deemed necessary and just by this Court.

Respectfully submitted,

JIM PETRO (0022096)

Attorney General

s/BRUCE D. HARRIGAN

BRUCE D. HARRIGAN (0047170)

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Trial Attorney for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Answer* was electronically filed on December 1, 2005. Parties may access this filing through the Court's electronic filing system. Additionally, a courtesy copy has been forwarded to plaintiff's counsel, Sharon A. Hicks, 825 South Front Street, Columbus, Ohio 43206, via regular U.S. Mail this 1<sup>st</sup> day of December, 2005.

s/BRUCE D. HARRIGAN

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Assistant Attorney General